

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2193

Introduced by Assembly Member Gordon

February 20, 2014

An act to add Chapter 6.5 (commencing with Section 1650) to Division 2 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 2193, as amended, Gordon. Habitat Restoration and Enhancement Act.

Existing law establishes the Department of Fish and Wildlife in the Natural Resources Agency, administered by the Director of Fish and Wildlife. Existing law requires the director to administer various programs for the protection and conservation of fish and wildlife resources.

This bill would enact the Habitat Restoration and Enhancement Act and require the director to approve a habitat restoration or enhancement project, as defined, if specified conditions are met as determined by the director. The act would create the Habitat Restoration and Enhancement Fund within the Fish and Game Preservation Fund and authorize the department to enter into an agreement to accept funds to achieve the purposes of the Habitat Restoration and Enhancement Act and deposit those funds into that account. The act would authorize the department to impose a schedule of fees for projects, based on the cost of a project, sufficient to recover all reasonable administrative and implementation costs of the department relating to the project, ~~but not to exceed fees~~

~~adopted by the department for standard lake or streambed alteration agreements for projects of comparable cost.~~ *project*. Moneys in the account would be available to the department, upon appropriation, for the purposes of administering and implementing the Habitat Restoration and Enhancement Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) California is home to over 300 animal and plant species
4 listed as either threatened or endangered by the state and federal
5 governments. Some of these species' populations are so low that
6 recovery actions must be taken immediately to avoid further
7 population declines or extinctions of the species.

8 (2) Historic and continued degradation of our state's ecosystems,
9 whether in remote areas or in our cities, continues to impact the
10 habitats of these protected species and other animals and plants.

11 (3) Recovery of listed species depends largely on significant
12 improvements in habitat quality and requires numerous habitat
13 restoration projects statewide.

14 (4) Tremendous demand exists for small-scale ecosystem
15 restoration projects aimed to benefit these species, yet current
16 regulatory mechanisms do not allow many willing private
17 landowners and local governments to efficiently access the
18 necessary environmental permits.

19 (5) Demand for these environmentally beneficial projects far
20 outpaces the regulatory approval process. As a result, hundreds of
21 small-scale projects designed to benefit California's most
22 vulnerable species and natural habitats are not being implemented.

23 (6) Expedited and coordinated agency permitting processes for
24 small-scale restoration projects have been shown to greatly boost
25 the number and geographic distribution of environmentally
26 beneficial projects across California – projects that cumulatively
27 improve water quality and aid in the recovery of salmon and
28 steelhead populations, migratory birds, and other sensitive species.

29 (b) It is the intent of the Legislature in enacting this measure to
30 provide for substantial permitting efficiency and thereby encourage

1 increased implementation of voluntary, environmentally beneficial,
2 small-scale habitat restoration projects that do all of the following:

3 (1) Provide an individual and cumulative net environmental
4 benefit.

5 (2) Incorporate measures to protect against any short-term
6 substantial, or potentially substantial, adverse change in any of the
7 physical conditions within the area affected by the project.

8 (3) Follow applicable preexisting state and federal agency
9 permits, certifications, and exemptions.

10 SEC. 2. Chapter 6.5 (commencing with Section 1650) is added
11 to Division 2 of the Fish and Game Code, to read:

12
13 CHAPTER 6.5. HABITAT RESTORATION AND ENHANCEMENT
14 ACT
15

16 1650. This chapter shall be known, and may be cited, as the
17 Habitat Restoration and Enhancement Act.

18 1651. As used in this chapter:

19 (a) “Fish passage guidelines” means those guidelines specified
20 in the department’s California Salmonid Stream Habitat Restoration
21 ~~Manual~~, *Manual* and the National Marine Fisheries Service,
22 Southwest Region, Guidelines for Salmonid Passage at Stream
23 Crossings, and subsequent amendments or updates to either
24 document.

25 (b) “Habitat restoration or enhancement project” means a project
26 with the primary purpose of accomplishing one or more of the
27 following:

28 (1) Stream or river bank, lake, or other waterway revegetation,
29 the primary purpose of which is to improve habitat.

30 (2) Stream or river bank stabilization with native vegetation or
31 other predominantly nonrock bioengineering techniques, or both,
32 to reduce or eliminate erosion and sedimentation.

33 (3) Modification, replacement, or removal of existing fish
34 passage barriers to improve water quality and fish passage,
35 including associated bridge installation. Examples of fish passage
36 barriers include, but are not limited to, road crossings and fords,
37 or both; small permanent, flashboard, and seasonal dams; weirs,
38 sills, and aprons; and poorly designed, undersized, or failed
39 culverts.

(4) Modifications of existing water diversion infrastructure to enhance stream flow and improve fish habitat and survival, including, but not limited to, pump relocation or removal and fish screen installation, operation, and maintenance, when the project does not increase total water diversion.

(5) Placement or installation of anchored and unanchored large wood, rootwads, spawning gravel, and other in-stream habitat structures or materials that benefit native fish by enhancing habitat, increasing stream channel complexity, or both.

(6) Sediment source reduction on existing roads, including outslowing, berm removal, installation of rolling dips, culvert and drainage upgrades, road decommissioning, and other techniques designed to improve water quality and habitat for species.

(7) Upland erosion control using bioengineering techniques and native revegetation for the purpose of improving water or habitat quality for species.

(8) Control and removal of aquatic and terrestrial invasive plant species.

(9) Installation of fencing and associated alternative stockwater supply infrastructure for the purpose of excluding or managing livestock to protect the bed and banks of streams, or other sensitive habitats.

(10) Restoration of freshwater and tidal hydrologic functions in wetlands and estuaries to improve fish and wildlife habitat.

(11) Creation of off-channel habitat to restore historic rearing and flow refugia for native fisheries and other aquatic species.

(12) Restoration of floodplains to restore natural hydrologic function, including, but not limited to, levee and dike setback and breaching.

(13) Restoration and maintenance of existing off-stream ponds, including spillway repair and sediment removal, to benefit native amphibian and other species.

(14) Other habitat restoration projects requiring permits from the department whose primary purpose is to recover listed species, and are included in a state or federal species recovery plan or other department-identified habitat and related species recovery actions, as determined by the director.

(c) “Project proponent” means a person, public agency, or nonprofit organization seeking to implement a habitat restoration or enhancement project.

1 (d) “Species recovery plan” means a guidance document
2 prepared by a government agency that identifies recovery actions,
3 based upon the best scientific and commercial data available,
4 necessary for the protection and recovery of listed species.

5 1652. (a) Notwithstanding any other law, the director shall
6 approve a habitat restoration or enhancement project if the project
7 will maintain existing levels of human health and safety protection,
8 including, but not limited to, flood protection, and meets all of the
9 following requirements:

10 (1) The project purpose is voluntary habitat restoration and is
11 not required as mitigation.

12 (2) The project is no larger than five acres in size, measured by
13 calculating the direct area of construction and construction-related
14 impact.

15 (3) The project is consistent with, or identified in, one or more
16 of the following:

17 (A) Federal- and state-listed species recovery plans or published
18 protection measures, biological opinions, or previously approved
19 department agreements and permits.

20 (B) Department and National Marine Fisheries Service fish
21 screening criteria or fish passage guidelines.

22 (C) The department’s California Salmonid Stream Habitat
23 Restoration Manual.

24 (D) Scientifically researched studies, guidance documents, and
25 practice manuals that describe best available habitat restoration or
26 enhancement methodologies that are utilized or approved by the
27 department.

28 (4) The project will not result in cumulative negative
29 environmental impacts that are significant when viewed in
30 connection with the effects of past, current, or probable future
31 projects.

32 (b) The director’s approval of a habitat restoration or
33 enhancement project pursuant to subdivision (a) shall be in lieu
34 of any other permit, agreement, license, or other approval issued
35 by the department, including, but not limited to, those issued
36 pursuant to Chapter 1.5 (commencing with Section 2050) of
37 Division 3, Chapter 10 (commencing with Section 1900) of
38 Division 2, and Chapter 6 (commencing with Section 1600) of
39 Division 2.

1 (c) Nothing in this chapter shall be construed as expanding the
2 scope of projects requiring a permit, agreement, license, or other
3 approval issued by the department.

4 (d) The director's approval of a habitat restoration or
5 enhancement project pursuant to subdivision (a) shall constitute
6 an action taken by a regulatory agency, as authorized by state law,
7 to ensure the maintenance, restoration, or enhancement of a natural
8 resource where the regulatory process involves procedures for the
9 protection of the environment.

10 (e) Within 60 days after the director receives a written request
11 to approve a habitat restoration or enhancement project, the director
12 shall determine whether the written request includes all of the
13 required information set forth in subdivision (f).

14 (f) A written request to approve a habitat restoration or
15 enhancement project shall contain all of the following:

16 (1) The name, address, title, organization, telephone number,
17 and email address of the natural person or persons who will be the
18 main point of contact for the project proponent.

19 (2) A full description of the habitat restoration and enhancement
20 project that includes the designs and techniques to be used for the
21 project, ~~restoration~~ *restoration* or enhancement methods, an
22 estimate of temporary restoration or enhancement-related
23 disturbance, project schedule, anticipated maintenance activities,
24 and how the project will result in a net benefit to any affected
25 habitat and species, consistent with paragraph (3) of subdivision
26 (a).

27 (3) An assessment of the project area that provides a description
28 of the existing flora and fauna and the potential presence of
29 sensitive species or habitat.

30 (4) A description of the environmental protection measures
31 incorporated into the project design, including, but not limited to,
32 measures to avoid and minimize impacts to water quality and
33 potentially present species protected by state and federal law, such
34 that no potentially significant negative effects on the environment,
35 as defined in Section 15382 of Title 14 of the California Code of
36 Regulations, are likely to occur with the application of the specified
37 environmental protection measures.

38 (5) Substantial evidence to support a conclusion that the project
39 meets the requirements set forth in this section. Substantial
40 evidence shall include references to relevant design criteria and

1 environmental protection measures found in the documents
2 specified in paragraph (3) of subdivision (a).

3 (g) During project implementation, the project proponent shall
4 notify the department within seven days of any minor amendments
5 to the project necessary for improving the project's habitat
6 restoration and enhancement outcome or further avoidance of
7 impacts.

8 (h) (1) If the director determines at any time that the project is
9 no longer consistent with subdivision (a), due to a material change
10 between the project as submitted and the project being implemented
11 or a change in the environmental circumstances in the area of
12 implementation, the director shall notify the project proponent in
13 writing and project implementation shall be suspended. Written
14 notice from the director shall be delivered in person, by certified
15 mail, or by electronic communication to the project proponent and
16 shall specify the reasons why approval of the project was
17 suspended. The approval for a project shall not be revoked pursuant
18 to this subdivision unless it has first been suspended pursuant to
19 this subdivision.

20 (2) Within 30 days of receipt of a notice of suspension, the
21 project proponent may file an objection with the director. Any
22 objection shall be in writing and state the reasons why the project
23 proponent objects to the suspension. The project proponent may
24 provide additional environmental protection measures, design
25 modifications, or other evidence that the project is consistent with
26 subdivision (a) and request that the notice of suspension should
27 be lifted and approval granted.

28 (3) The director shall revoke approval or lift the suspension of
29 project approval within 30 days after receiving the project
30 proponent's objection pursuant to paragraph (2).

31 1653. (a) The Habitat Restoration and Enhancement Account
32 is hereby created in the Fish and Game Preservation Fund.

33 (b) The department may enter into an agreement to accept funds
34 from any public agency, person, business entity, or organization
35 to achieve the purposes of this chapter. The department shall
36 deposit any funds so received in the account. The funds received
37 shall supplement existing resources for projects and programs.

38 (c) The department may impose a schedule of fees for projects,
39 based on the cost of a project, sufficient to recover all reasonable
40 administrative and implementation costs of the department relating

1 to the project, but not to exceed fees adopted by the department
2 pursuant to Chapter 6 (commencing with Section 1600) of Division
3 2 for standard lake or streambed alteration agreements for projects
4 of comparable cost. *project.*

5 (d) Moneys in the account shall be available to the department,
6 upon appropriation by the Legislature, for the purposes of
7 administering and implementing this chapter.